IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1805 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NAGINBHAI HARIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 1805 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by

the detaining authority, by its order dated 29.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ( "PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about three criminal cases, which are pending against the petitioner. The aforesaid cases are registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in country made liquor. After recording subjective satisfaction and after considering the statements of the witnesses, whose names have not been disclosed to the petitioner, the detaining authority has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. At the time of hearing of this petition, learned Advocate for the petitioner has submitted that, there is total non-application of mind on the part of the detaining authority, as, according to him, the sponsoring authority has recorded the statements of the witnesses on 23.12.2003, but prior to that, the proposal was sent on 20.12.2003. On this aspect also, as such there is no dispute, as learned AGP Ms.Raval, after going through the file, has submitted that the statements of the witnesses were recorded on 23.12.2003, however, proposal was sent on 20.12.2003.

4. Learned Advocate for the petitioner further submitted that, the petitioner has made a representation against such detention on 24.1.2004, which was received by the detaining authority on 30.1.2004. However, for 3 days, i.e. from 31.1.2004 to 2.2.2004, the said representation remained unattended, and the same was despatched to the State Government by the detaining authority on 3.2.2004. It is submitted by the learned Advocate for the petitioner that, even though the representation which was initially made on 24.1.2004 to the detaining authority was received by the said authority on 30.1.2004, the detaining authority has not despatched the same immediately to the State Government, and, therefore, on the said ground this petition is required to be allowed. Though the point of delay is already taken in the petition, no proper reply is given, explaining the delay in forwarding the representation.

5. The learned Advocate for the petitioner has relied upon an unreported decision of this Court (Coram :

A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

"para 6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

6. In view of the aforesaid facts and circumstances of the case, and in view of the fact that even the detaining authority has not despatched the representation to the State Government in time, and the detaining authority has not highlighted the reasons for such delay and, therefore, under these circumstances, since the representation is not immediately dispatched by the detaining authority to the State Government, this petition is required to be allowed and it is allowed, as it is a settled position that the representation is required to be dealt with promptly.

7. In view of what is stated above, this petition is allowed. The order of detention dated 29.12.2003 is quashed and set aside. The detenu, Naginbhai Haribhai Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

8. Learned AGP Ms.Raval has vehemently submitted that, the petitioner is involved in three offences under the Bombay Prohibition Act, and is repeating the same type of offences. However, this aspect can be highlighted by the prosecuting agency before the competent court before whom bail application is pending. On this point, this Court is not required to express any opinion, as it is for the State Government to take appropriate action, if it thinks fit, in accordance with law. This Court has not expressed any opinion, as bail application is required to be decided by the Magistrate on its own merits and in accordance with law.

( P.B. Majmudar, J. )

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